

# **EXHIBIT 8**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL TERM: **PART: 53**  
-----X  
ORCHARD HOTEL, LLC,

Plaintiff,

-against-

INDEX NO.  
850044/11

D.A.B. GROUP, LC; ORCHARD CONSTRUCTION,  
LLC; FLINTLOCK CONSTRUCTION SERVICES,  
LLC; JJ K MECHANICAL INC.; EDWARD MILLS &  
ASSOCIATES, ARCHITECTS, P.C.; CASINO  
DEVELOPMENT GROUP, INC.; CITYWIDE  
CONSTRUCTION WORKS, INC.; EMPIRE  
TRANSIT MIX, INC.; MARJAM SUPPLY CO., INC.;  
ROTAVELE ELEVATOR, INC.; SMK ASSOCIATES, INC.,  
FJF ELECTRICAL CO, INC.; CITY OF NEW YORK;  
NEW YORK STATE DEPARTMENT OF TAXATION &  
FINANCE; LEONARD B. JOHNSON; CITY OF  
NEW YORK ENVIRONMENTAL CONTROL BOARD;  
BROOKLYN FEDERAL SAVINGS BANK; STATE  
BANK OF TEXAS and JOHN DOE #1 through JOHN  
DOE #100, the last 100 names being fictitious,  
their true identities unknown to plaintiffs,  
and intended to be the tenants, occupants,  
persons or corporations, if any, having  
or claiming an interest in or lien upon the  
premises described in the complaint,

Defendants.

-----X

60 Centre Street  
New York, New York 10007  
July 9, 2013

**B E F O R E:**

**THE HONORABLE CHARLES E. RAMOS,**

**J U S T I C E**

(APPEARANCES ON FOLLOWING PAGE)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

A P P E A R A N C E S:

MORRISON COHEN, LLP  
Attorneys for Plaintiff  
909 Third Avenue  
New York, New York 10022

BY: Y. DAVID SCHARF, ESQ.  
DANIELLE C. LESSER, ESQ.  
BRETT D. DOCKWELL, ESQ.

FAVATA & WALLACE, LLP  
Attorneys for Defendant D.A.B. Group  
229 Seventh Street - Suite 300  
Garden City, New York 11530  
BY: WILLIAM G. WALLACE, ESQ.

EVERETT N. NIMETZ, ESQ  
Attorney for Defendant D.A.B. Group  
125-10 Queens Boulevard - Suite 311  
Kew Gardens, New York 11415

HOLLANDER & STRAUSS, LLP  
Attorneys for Defendant Flintlock Construction  
40 Cutter Mill Road - Suite 203  
Great Neck, New York 11021  
BY: LARRY B. HOLLANDER, ESQ.

O'REILLY, MARSH & CORTESELLI, P.C.  
Attorneys for Defendants Brooklyn Federal Savings  
and State Bank of Texas  
222 Old Country Road - 2nd Floor  
Mineola, New York 11501  
BY: WILLIAM B. HARVEY, ESQ.

(continued)

1

2

A P P E A R A N C E S :

3

4

INGRAM, YUZEK, GAINEN, CARROLL & BERTOLOTTI, LLP  
Attorneys for Defendant Edward Mills & Associates  
250 Park Avenue

5

New York, New York 10177

6

BY: TARA B. MULROONEY, ESQ.

7

8

9

10

11

12

\* \* \*

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Maybe we should have the plaintiff replead.  
Sorry, D.A.B. replead.

MR. WALLACE: Defendant on the counterclaim.

THE COURT: Yes.

MR. SCHARF: They don't need to, Judge.

THE COURT: Before we jump to conclusions --

MR. WALLACE: In fact --

THE COURT: We have new facts not known, for  
whatever reason -- and I don't want to get into that  
now -- not known to the defendant when they drafted the  
counterclaim. We are now dealing with a different set  
of facts and a motion addressed to a counterclaim  
drafted before the discovery. It makes no sense.

MR. SCHARF: Your Honor, if he were to make an  
oral application --

THE COURT: If the defendant were to replead --  
I'm trying to think what do we have here. Is it a  
contract? Is it some kind of a fraud? Is it -- I  
don't know what it is. I shouldn't have to draft that  
claim. They should draft it.

MR. WALLACE: And you're right, your Honor. We  
were in no position, as you know, when we got served  
with the complaint and prepared an answer and  
counterclaim, the first thing you do is ask the client:  
I read these documents. Is there a writing extending

1

2

this agreement? He says they told me, they kept

3

telling me back to August of 2010 don't worry. Your

4

loan is extended. We only found out a month ago, six

5

weeks ago that it had been extended in writing.

6

THE COURT: I think the only logical thing to do

7

here is to grant reargument to the extent of denying

8

the motion under 3211 without prejudice and

9

permitting -- granting leave to the counterclaim

10

defendant to replead the counterclaim. Then we can

11

deal with a 3211 motion knowing precisely what they

12

pled. You are asking me to dismiss a claim that hasn't

13

been pled yet.

14

MR. SCHARF: No, your Honor. I am asking you --

15

let's deal with it from any theory. Let's just deal

16

with breach of contract. Please, just give me a couple

17

of minutes, Judge, because I know it's troubling you

18

and I am trying to address it.

19

THE COURT: Sure. You are putting me in a

20

position of being an advocate for the plaintiff and I

21

shouldn't. I don't know what their claim is now.

22

MR. SCHARF: They have stated what their claim

23

is. Mr. Wallace put it in his affidavit.

24

THE COURT: Good, then let him replead.

25

MR. SCHARF: Judge, no --

26

THE COURT: Yes.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

on videotape.

Off the record.

(Whereupon, a discussion was held off the  
record.)

THE COURT: Okay. Good to see you.

\*\*\*\*\*

CERTIFIED THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT  
OF THE ORIGINAL STENOGRAPHIC MINUTES IN THIS CASE.



-----  
ERIC ALLEN  
SENIOR COURT REPORTER